

1 just isn't something that came out like that. I can't tell
2 you why three years later if I had to do it all over again,
3 having the hindsight of what happened as a result of it, I
4 certainly would have been very careful to address that
5 specifically.

6 JUDGE CHACHKIN: Go ahead, Mr. Block.

7 CROSS-EXAMINATION (RESUMED)

8 BY MR. BLOCK:

9 Q Turn to page 20 of Exhibit No. 3, Press Exhibit
10 No. 3.

11 It's true, is it not, that you specifically
12 distinguished in your pleading between legal errors that you
13 wanted to attack, what you call Part II, and Part III, which
14 you say identifies various inaccuracies in the Inspector
15 General's factual recitation concerning the July 1, 1993
16 meeting and surrounding events.

17 A Yes.

18 Q So you separated the legal from the factual
19 errors?

20 A I did, but we did not attempt to parse each
21 sentence that we disagreed with on a factual basis.

22 Q Was there any restriction to your page limit that
23 you could have spent time doing this?

24 A Well, there were two restrictions.

25 One is the restriction of the span of attention of

1 the people who read pleadings. And if you get too long,
2 they don't read them. And the second is that, you know, we
3 didn't have that much time and we were involved in a lot of
4 things concerning this case, I believe, at the same time
5 that were going on.

6 Q You spent a lot of time talking about whether Mr.
7 Gordon and you had a conversation and what the content of
8 that conversation was.

9 That's correct, is it not?

10 A Right.

11 Q That was referred to at 22.3.

12 A Mr. Block, I have not reviewed this pleading since
13 1993. So if you are asking me did I say something in here
14 specifically, all I can say is that it does speak for
15 itself. But if you want me to look, I will try to find
16 something.

17 JUDGE CHACHKIN: Well, we will go off the record
18 to afford you an opportunity to read the report.

19 We will go off the record.

20 (Whereupon, a recess was taken.)

21 JUDGE CHACHKIN: We are back on the record. The
22 witness has indicated that she has finished reading the
23 document which is Press Exhibit 3.

24 Go ahead, Mr. Block.

25 BY MR. BLOCK:

1 Q I have no further questions about the document
2 unless there is something different that you have that
3 changed your testimony that there was no direct challenge to
4 the statement of the Inspector General that your discussions
5 with Mr. Pendarvis focused on an informal objection.

6 A I -- the only observation I can make after reading
7 it, Mr. Block, is that the only errors that we addressed
8 because we thought they would be ones that were germane were
9 errors concerning Mr. Gordon's recitation, because everyone
10 else, Mr. Pendarvis, Mr. Stewart, Ms. Kreisman's
11 recollections of the events were consistent with my
12 recollection of the events. So that we did not go through
13 and try to correct Mr. Andary's misstatements. We addressed
14 ourselves to the misstatements and the errors and the
15 inconsistencies regarding Mr. Gordon.

16 Other than that we did not address the errors in
17 Mr. Andary's report on a factual basis.

18 Q You intended that your statements informing Mr.
19 Pendarvis about the content of the file of the proceedings
20 was to inform him about whether or not the matter was
21 restricted under the ex parte rules; is that correct?

22 A He asked a question regarding the objection. I
23 answered him in a brief statement. I believe that he was
24 asking me for purposes of whether or not the ex parte rules
25 would preclude a meeting. I believe that it did not -- I

1 told him what the pleadings were, which was the basis on
2 which I formed my opinion as to why the ex parte rules did
3 not preclude the meeting. He said that's okay, no, he could
4 meet. So I assumed that he came to the same conclusion. We
5 never mentioned the word "ex parte."

6 Q You understood that his question to you was -- he
7 was looking in his question to you he was looking for an
8 accurate recitation of what was in the file?

9 MR. EISEN: Objection, Your Honor. Who are we
10 talking about?

11 BY MR. BLOCK:

12 Q Well, let's start with Mr. Pendarvis.

13 Did you understand that Mr. Pendarvis in his
14 question to you was looking for an accurate recitation of
15 what was in the files?

16 A No, I thought he was asking whether there had been
17 objections filed. I went no further than that. I answered
18 his question.

19 I don't know what you mean when you say "what's in
20 the file".

21 Q He assumed he was not making an independent review
22 of the file. He was going to ask you and going to rely on
23 your answer?

24 A I had assumed he had already made an independent
25 review of the file. He had reviewed the letter denying

1 Rainbow's extension application and pulling the construction
2 permit.

3 Q The specific question to you he asked about
4 whether there had been any objections filed was a request
5 for you to give him an answer based on as much as you knew
6 about the file; is that correct?

7 A He asked me whether there had been objections
8 filed. I told him what I knew what had been filed.

9 Q Right. But you didn't --

10 A That is as far as the conversation went.

11 If you are asking me to now try to discern what
12 his -- what was in his mind, I assumed it was for purposes
13 of deciding whether or not there was anything improper about
14 the meeting.

15 Q Did you feel free to misrepresent the file to him
16 in response to an answer like that -- a question like that?

17 A I did not misrepresent the file.

18 Q No, I didn't ask that.

19 I asked if you felt free to do that.

20 A I would never feel free to misrepresent a file to
21 the Commission or anyone else. My --

22 Q So you --

23 A Excuse me, Mr. Block.

24 I have an obligation as an attorney, which I take
25 very seriously. When he asked me for information, I gave

1 him the information to the best of my ability.

2 Q That was my question.

3 And if Mr. Stewart and you had the same
4 conversation, you would have had the same feeling that you
5 should give as full a response as possible -- as accurate as
6 possible; is that correct?

7 A Of course.

8 Q You didn't mention the Sandifer letter to Mr.
9 Daniels in either of your conversations with Mr. Stewart or
10 Mr. Pendarvis; is that correct?

11 MR. EISEN: Objection. That's been asked at least
12 twice.

13 JUDGE CHACHKIN: That has been asked and answered.

14 BY MR. BLOCK:

15 Q And you did not mention the Sandifer letter in
16 your conversations with Ms. Bush before you asked her to
17 make a telephone call; is that correct?

18 MR. EISEN: That's also been asked.

19 JUDGE CHACHKIN: I will overrule the objection.

20 THE WITNESS: I did not.

21 MR. BLOCK: Okay.

22 BY MR. BLOCK:

23 Q You testified that you had several conversations
24 with Mr. Gordon that were about the -- around the time of
25 the issuance of the June 18th letter; is that correct?

1 A I had conversations with Mr. Gordon in June of
2 1991.

3 Q 1991?

4 A 1993. Sorry.

5 Q Thank you.

6 Did Mr. Gordon ever permit you to make a
7 presentation to him on the merits of the Rainbow
8 application?

9 MR. EISEN: Objection to the form of the question
10 "permit you." What does that mean? Did he ask you -- did
11 he ask for information about --

12 JUDGE CHACHKIN: Overruled.

13 THE WITNESS: I did not have any opportunity to
14 find out.

15 BY MR. BLOCK:

16 Q You testified --

17 A I made no effort to do so.

18 VOIR DIRE EXAMINATION

19 JUDGE CHACHKIN: What you are saying is you never
20 discussed the merits with Mr. Gordon at anytime?

21 THE WITNESS: That's right.

22 JUDGE CHACHKIN: Well, what was the purpose of
23 calling Mr. Gordon and talking to Mr. Gordon if you didn't
24 discuss the merits?

25 THE WITNESS: We discussed whether we would get

1 something out. They had held onto these applications for
2 almost two years.

3 JUDGE CHACHKIN: But at no time did you attempt to
4 discuss the merits with him?

5 THE WITNESS: Your Honor, I did not discuss the
6 merits with him. I discussed with him why it was taking so
7 long, when could we expect something, who had it, where was
8 it in the review process. And frankly, you know, it didn't
9 seem to make much difference either.

10 JUDGE CHACHKIN: Well, I am kind of curious. You
11 have taken the position that it was perfectly all right to
12 have an ex parte conversation with members of the Commission
13 staff.

14 THE WITNESS: That's correct.

15 JUDGE CHACHKIN: Mr. Gordon was working on the
16 decision, and it's your testimony despite that fact you
17 never discussed the merits, or attempted to discuss the
18 merits with Mr. Gordon?

19 THE WITNESS: No, I had no reason to. We had
20 filed our pleadings. We wanted action. I could not
21 conceive, Your Honor, that the Commission staff would ever
22 deny those extensions of time. We had an applicant who got
23 a final decision from the Supreme Court on August 30, 1990.
24 We had been required while the case was in court, for
25 reasons that I objected to continuously, to file extensions

1 of time -- at the time I just felt they were trying to get
2 the \$200 back -- while the case was pending.

3 We were required to file for extensions of time
4 while the Commission had pulled the case back from the Court
5 of Appeals to review the minority broadcast application.
6 And so we were required to file for extension of time less
7 than six months after the Supreme Court had made the grant.

8 Now, I have practiced before the FCC, both within
9 and without, for 30 years. I have never known a case where
10 the Commission has not given an applicant a full time to
11 construct after the court decides. We had six months.

12 Now, it is true Press came in and filed an
13 informal objection, but that wouldn't change the fact that
14 Rainbow had never had two years to construct. I didn't have
15 to talk to Paul Gordon about the merits. As far as I was
16 concerned, the merits were clear from everything I knew
17 about the FCC rules and the FCC policies and the FCC
18 precedent.

19 And I was shocked when it came out the other way.
20 And, frankly, I thought nobody could have looked at that
21 thing. It had to be a mistake.

22 JUDGE CHACHKIN: But the point of the matter is
23 that when you talked to Mr. Gordon your testimony is, and
24 perhaps you can tell us in your own words what precisely you
25 discussed with Mr. Gordon on each of the occasions in which

1 you spoke to him.

2 THE WITNESS: I can't tell you precisely, but I
3 can tell you that I phoned and said what's happening with
4 the Rainbow application, when do we expect something on it,
5 where is it.

6 JUDGE CHACHKIN: And what was Mr. Gordon's
7 response, to your recollection?

8 THE WITNESS: To my recollection, it started in
9 '92, after they were filed. You know, they were filed in
10 '91, and --

11 JUDGE CHACHKIN: Let's address ourselves to '93.

12 THE WITNESS: Well, by '93, we had already had
13 three applications before them, including the assignment
14 application before them.

15 JUDGE CHACHKIN: So you called him and --

16 THE WITNESS: When I called him --

17 JUDGE CHACHKIN: Yes?

18 THE WITNESS: -- I would say to him, and primarily
19 by June it was getting ridiculous. There was no reason.
20 The pleadings were finished. They weren't very difficult
21 questions as far as I was concerned.

22 JUDGE CHACHKIN: I understand that.

23 THE WITNESS: And I would say to him, "Have you
24 finished?" And he would either say "It's on Clay's desk,"
25 or "I am looking at it."

1 "When can I expect it?"

2 "Well, it's on the schedule for the next quarter."

3 And I would wait until the next quarter, and they apparently
4 had a list of cases that they had agreed that they would
5 finish by that year. And I would call back again, and say,
6 "Where is it?"

7 If he told me it was on Clay's desk, I would call
8 Clay, and ask him, and usually you have to call Clay
9 Pendarvis three or four times before at 6:30 one night the
10 phone rings and he called me back.

11 And he said, "Oh, yeah, I think I have it. I will
12 try to give you that." And that was the nature of the
13 conversations.

14 JUDGE CHACHKIN: So you are saying the
15 conversations with Mr. Gordon was -- on or about the June
16 period that we're talking about after Press had filed the
17 formal objections -- consisted of merely status calls asking
18 him what was the -- when was the thing going to come out; is
19 that right?

20 THE WITNESS: Yeah, when they were going to get to
21 it. I mean, they were aggressive status calls as I call it.

22 JUDGE CHACHKIN: What do you mean by "aggressive
23 status calls"?

24 THE WITNESS: I mean that --

25 JUDGE CHACHKIN: You tried to impress upon him the

1 fact that it was -- this was a matter which is really
2 something that should be resolved in your favor since --

3 THE WITNESS: No, I tried to impress upon him that
4 all the pleadings were in. There was no reason why we
5 couldn't get a decision out on this thing.

6 JUDGE CHACHKIN: And what did Mr. Gordon say on
7 any of these occasions as you recall?

8 THE WITNESS: He would say -- well, what I recall
9 is he would normally tell me, "Well, you know, either it was
10 on" -- he had sent the draft over to Clay Pendarvis. It was
11 on his desk. Or he would tell me that it was on the
12 schedule of things to be accomplished and, you know, they
13 won't get to it until the next quarter, and it would be
14 responses like that.

15 And there was never any resolution; never had any
16 information from him until June when he told me that -- on
17 the 17th he told me that it would be coming out that week.
18 I didn't get it so I called him back because I figured he
19 was then going to tell me that they hadn't gotten it out.
20 And when I found out that it had come out the week before
21 and I still hadn't had a copy of it, he said, "Well, you
22 know, would you like me to read it to you," or I asked him
23 to read it to me. I can't recall which. But he did read it
24 to me. And I was shocked.

25 JUDGE CHACHKIN: And you never in any of these

1 conversations suggested what the outcome should be or
2 intimated --

3 THE WITNESS: No.

4 JUDGE CHACHKIN: -- even directly what the outcome
5 should be whereby Mr. Gordon tried to stop the conversation
6 at that point?

7 THE WITNESS: No, he knew what we thought the
8 outcome should be. We filed all our pleadings.

9 JUDGE CHACHKIN: And, Mr. Gordon, to your
10 recollection never mentioned to you that he couldn't discuss
11 the matter because he was restricted?

12 THE WITNESS: No. As a matter of fact, when I
13 asked him if I could talk to Pendarvis about it after it
14 came out he said that that was up to Clay.

15 JUDGE CHACHKIN: All right, but I am talking about
16 all these prior occasions when you called.

17 THE WITNESS: Yes, I know. But all I am saying is
18 that if he thought that --

19 JUDGE CHACHKIN: He never mentioned anything with
20 respect to --

21 THE WITNESS: He never told me that the Commission
22 has a process that if there is an improper contact to go
23 through, I was never notified of that if he thought there
24 was. And, frankly, you know, he wouldn't have told me that
25 it was up to Clay to talk to me if he thought there was some

1 ex parte restriction on it.

2 JUDGE CHACHKIN: This was after the decision had
3 come out.

4 THE WITNESS: But this was before the time for
5 reconsideration.

6 JUDGE CHACHKIN: I understand that. But these
7 prior conversations with him that you claim you don't
8 discuss the status, there was never any mention by Mr.
9 Gordon --

10 THE WITNESS: No.

11 JUDGE CHACHKIN: -- as to the ex parte rules and
12 the applicability of the ex parte rules?

13 THE WITNESS: No, there wasn't.

14 JUDGE CHACHKIN: Go ahead.

15 BY MR. BLOCK:

16 Q Your testimony is that there was no inkling before
17 June 1993 that you might lose on the application?

18 A Absolutely none.

19 Q Turn to Exhibit No. 6, please, of the joint
20 exhibits. This is a letter from Clay Pendarvis to Rainbow
21 Broadcasting Company in care of you, Margot Polivy, March
22 22, 1993.

23 A Um-hmm.

24 Q It state that -- the second paragraph, the third
25 sentence, "At this time we cannot conclude that the grant of

1 the extension application would serve the public interest."

2 A Um-hmm.

3 Q This was six weeks before the June 18th letter.

4 A That's right.

5 Q During the time between this letter and the June
6 18th letter, you had conversations with Mr. Gordon, did you
7 not?

8 A I know I had conversations with him in the
9 beginning of June. And if I had conversations prior to
10 that, you are going to have to refresh my memory. But I did
11 not -- if you are asking me did that put us on notice, is
12 that your question?

13 Q Well, I will get to the next question.

14 A Okay.

15 Q Your testimony is that at no time did you try to
16 convince Mr. Gordon as to why the extension application
17 would serve the public interest after March 22, 1993?

18 A Yeah, we responded to the letter on April 12th.

19 Q And you did not orally communicate further your
20 views as to why it ought to be granted?

21 A No.

22 I wouldn't have spoken to Mr. Gordon there anyway.

23 Q Mr. Gordon was the attorney responsible for
24 preparing --

25 A I know, but --

1 Q -- the answer; is that correct?

2 A -- by that time Clay had -- Clay Pendarvis would
3 have been the person. But I didn't speak to anybody about
4 it. I filed a response.

5 Q And you were willing to rest on the response at
6 the time?

7 A Yes.

8 Q You testified, I believe it was on direct, it
9 might have been in response to Mr. Cole, that you had -- I
10 guess it was direct -- you had talked to Mr. Rey. When you
11 received the June 18th letter, you called Mr. Rey up and you
12 discussed filing a petition for reconsideration at that
13 time.

14 A That was one of the things we discussed, yes.

15 Q So you didn't have to have a meeting with the
16 staff in order to file a petition for reconsideration; is
17 that correct?

18 A No, I didn't have to have a meeting with the staff
19 to file a petition for reconsideration?

20 Q Well, then, why did you have a meeting with the
21 staff before you filed your petition for reconsideration?

22 A Because I felt that it was necessary to bring this
23 to the attention of people in the more senior position in
24 the Mass Media Bureau. I believe that there was a clear
25 misapplication of the law. I did not believe there was

1 anything improper about meeting. Lord knows if I thought
2 there was something improper I wouldn't have had five people
3 in the anteroom of Roy Stewart's office.

4 But I did want to bring it to their attention. I
5 did want to make certain that they were aware of the
6 existence of the Rainbow applications and the extensions
7 that had not been granted, and that I didn't want to be in
8 the position of having to wait two years ago to have them
9 deny a petition for reconsideration.

10 MR. SILBERMAN: Your Honor, may we go off the
11 record?

12 JUDGE CHACHKIN: Yes, let's go off the record.

13 (Discussion off the record.)

14 THE WITNESS: I don't want to mislead you. I had
15 purposely asked for the meeting so that Mr. Stewart and Mr.
16 Pendarvis would be aware that the staff opinion was
17 incorrect. And when we filed our petition for
18 reconsideration, that they would know it existed.

19 BY MR. BLOCK:

20 Q You couldn't have filed a petition for
21 reconsideration first and then had a meeting later, or
22 rested on the pleadings?

23 A I could have. But obviously it hadn't been
24 anything that gave expedition to this beforehand, and I
25 believe that it was a proper exercise of counsel's

1 responsibility given my understanding of the Commission's
2 rules to do this, and I did.

3 I believe that there was no restriction on us. I
4 still believe that the Commission rules do not restrict us
5 from doing it. I understand the Commission has said it's a
6 close case and they have come out feeling differently. And
7 I understand there was a difference of legal judgment. All
8 I can say is at that time I made my legal judgment. I
9 believed I had good and sufficient reason to make it, and I
10 certainly would not intentionally violate the Commission's
11 rules and put a client in that position.

12 JUDGE CHACHKIN: Go ahead, Mr. Block.

13 BY MR. BLOCK:

14 Q Why did you not mention the Daniels letter in all
15 of these conversations with the staff and all of the times
16 that you had an opportunity to meet with the staff on July
17 1st?

18 A Because I didn't consider the Daniels letter --
19 frankly, the Daniels letter, it happened two years before,
20 and I cannot tell you that I focused specifically on the
21 Daniels letter. Even if I had, I would not have considered
22 the Daniels letter to be relevant to our position in this,
23 because I considered the Daniels letter to be the Managing
24 Director's notion of a third party coming in and just
25 telling them that the proceeding is restricted as to you. I

1 did not think it affected us at all.

2 MR. BLOCK: I have no further questions at this
3 time.

4 JUDGE CHACHKIN: Any redirect?

5 MR. EISEN: I think I have a few questions. Could
6 I have maybe five or six meetings?

7 JUDGE CHACHKIN: We will take a 10-minute break.

8 MR. EISEN: Thank you, Your Honor.

9 (Whereupon, a recess was taken.)

10 VOIR DIRE EXAMINATION

11 JUDGE CHACHKIN: Let's go back on the record.

12 Before you begin I want to ask a couple questions
13 about one area which is not clear in my mind.

14 And, Ms. Polivy, why did you enlist the support of
15 Ms. Bush here?

16 THE WITNESS: Why did I ask her to call the FCC?

17 Because I wanted her to call over there and to ask
18 them what was happening. Again, for the same reasons, to
19 bring to their attention the fact that they had done
20 something, and I thought that she would get a fast response
21 from them.

22 JUDGE CHACHKIN: You mean you wanted her to
23 discuss the merits with them?

24 THE WITNESS: No. I wanted her to discuss with
25 them what was going on.

1 JUDGE CHACHKIN: Well, what do you mean "what was
2 going on"? The status, there had already been a decision.

3 THE WITNESS: I wanted to know, for example,
4 whether Mr. Stewart even knew about it.

5 JUDGE CHACHKIN: Well, isn't that a discussion of
6 the merits?

7 THE WITNESS: Well, I didn't -- no, I didn't
8 consider that as --

9 JUDGE CHACHKIN: It's the status, as I understand
10 the status, is asking when can I expect a decision to be
11 out.

12 THE WITNESS: Well, I would consider status to say
13 do you know they you have issued, and that your office has
14 issued a decision. That I would consider a perfectly status
15 call. But I didn't ask her --

16 JUDGE CHACHKIN: What do you mean "do you know --

17 THE WITNESS: But I didn't ask her to call Mr.
18 Stewart or anyone else and say to her "This decision is
19 wrong. You should reverse it."

20 JUDGE CHACHKIN: Well, why --

21 THE WITNESS: And, frankly, even if she had since
22 it wasn't an exempt proceeding, it would have been
23 appropriate, but I wouldn't have asked her to do that. I
24 just wouldn't.

25 JUDGE CHACHKIN: I mean, of all the people you

1 could have asked why particularly did you choose Ms. Bush to
2 ask her? Was it because of her position in the Senate?

3 THE WITNESS: Well, it was certainly because of
4 her position in the Senate, because that was an area that
5 she had interest and responsibility for. She was somebody
6 that I knew. For all those reasons, yes.

7 JUDGE CHACHKIN: And you obviously thought that
8 she could influence whatever decision the Commission had
9 rendered?

10 THE WITNESS: No, I thought that she could bring
11 it to their attention quickly.

12 JUDGE CHACHKIN: Bring what to their attention?

13 They had already issued a decision and you knew
14 that you could file a petition for reconsideration.

15 So what did you want to bring to their attention
16 by having Ms. Bush call?

17 THE WITNESS: Well, Your Honor, I knew I could
18 file a petition for reconsideration. But I had waited over
19 two years previously for them to even rule on informal
20 objections.

21 JUDGE CHACHKIN: But they --

22 THE WITNESS: Yes, but for reconsideration they
23 could take another two years. In the real world clients
24 can't wait four years while the FCC has an administrative
25 glitch that takes them that long to get decisions out. And

1 then we would have an application for review. So these
2 people who were in a position of being thwarted in going
3 forward with the construction permit while their competitors
4 and the independent stations in the markets were going
5 forward could easily be left for years more to sit and wait.

6 You know, I make no secret about it, why I thought
7 there was no -- there was nothing that precluded me either
8 Ms. Bush's contact with the Commission or mine. The primary
9 purpose of that was to get the attention of the senior staff
10 of the Mass Media Bureau.

11 JUDGE CHACHKIN: To do what?

12 There was nothing pending. You hadn't filed your
13 petition for reconsideration?

14 THE WITNESS: So that when it came --

15 JUDGE CHACHKIN: So what could they do?

16 THE WITNESS: That they could be aware that when a
17 petition for reconsideration came which would have to --

18 JUDGE CHACHKIN: Yes.

19 THE WITNESS: -- that they would look at it
20 seriously.

21 JUDGE CHACHKIN: Look at it very seriously.

22 Are you saying that the petition for
23 reconsideration you wouldn't set forth your arguments?

24 THE WITNESS: Of course.

25 But the way the Broadcast Bureau works, now the

1 Mass Media Bureau, is that the staff person that is assigned
2 to a particular entity such as this makes the decision,
3 writes it up, sends it up to the branch or the bureau. The
4 people in the branch review the letter, not the file, the
5 letter to see if it sounds okay. No one ever looks at the
6 pleadings other than the first person on the food chain.

7 When reconsideration comes it's handled the same
8 way. So that the same person who has made the initial
9 decision, unless somebody has some interest in looking at
10 the file, makes the reconsideration decision. And,
11 unfortunately, if you file and application for review, it
12 goes back to the same person who did the initial.

13 JUDGE CHACHKIN: So what you are telling me is you
14 didn't like the procedures so you wanted some special
15 attention to your pleading as the --

16 THE WITNESS: No, I said --

17 JUDGE CHACHKIN: -- that ordinarily would happen
18 to any other pleading.

19 THE WITNESS: What I wanted was I wanted the
20 senior staff at the Broadcast Bureau, Mass Media Bureau, to
21 be aware that there had been an action taken, and I wanted
22 to make sure that they looked at it the next time it came by
23 them.

24 JUDGE CHACHKIN: Is that what you instructed Ms.
25 Cook to tell the staff?

1 THE WITNESS: The only instruction I gave to Ms.
2 Cook, if you call it an instruction, is I asked her to call
3 over to the FCC to find out what the heck was going on over
4 there.

5 JUDGE CHACHKIN: Well, that decision had been
6 rendered as there was no reason to find out what the heck
7 was going on because they had a decision.

8 THE WITNESS: But how could the come out with such
9 a decision?

10 JUDGE CHACHKIN: Oh, so you wanted her somehow --

11 THE WITNESS: No.

12 JUDGE CHACHKIN: -- to interfere, to somehow
13 involve herself in changing the decision?

14 THE WITNESS: First of all, in my mind there would
15 have been nothing wrong with her doing that. But all I
16 asked her to do was find out what the heck was going on.
17 And in my mind what that meant is was that a conscious
18 decision made by the staff. And she came back and say Roy
19 Stewart said he didn't know anything about it.

20 JUDGE CHACHKIN: Well, you know, this is very
21 interesting. I thought you told me that the letter to
22 Daniels was restricted. While it wouldn't be restricted to
23 the applicant, it would be restricted since he was the third
24 party.

25 Wasn't Ms. Cook a third party?

1 THE WITNESS: I didn't think there was anything
2 improper in her calling.

3 JUDGE CHACHKIN: Well, why isn't she any different
4 than Mr. Daniels?

5 THE WITNESS: I gave it no thought.

6 JUDGE CHACHKIN: Well, is she different?

7 THE WITNESS: I don't know whether she is or not.

8 JUDGE CHACHKIN: Well, why would she not be? She
9 didn't represent Rainbow.

10 THE WITNESS: Well, because that's, in effect, a
11 status call, and as far as I know congressional status calls
12 are always in order.

13 JUDGE CHACHKIN: Well, what was the status call?
14 The decision had been rendered. So I am still trying to
15 find out what is the status call that you wanted to find out
16 about?

17 There wasn't anything pending at the time for her
18 to find out about, was there?

19 THE WITNESS: I didn't say anything about the
20 status. I said I told her that a decision had been made. I
21 told her to call and find out what the heck was going on
22 over there. And that was the sum and substance of the
23 conversation.

24 She came back, she did call me. She said Roy
25 Stewart said he didn't know anything about it. He would try